

MAY 23 2008 9:32AM

WEISBERGWEISBE-ESDS

2127875237

B.2

Janis Barker (JCR 6767)  
National Labor Relations Board  
Region 2  
26 Federal Plaza, Room 3614  
New York, New York 10278  
(212) 264-0300

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CELESTE J. MATTINA, Regional Director,  
Region 2, National Labor Relations Board,  
for and on Behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner,

-against-

SAIGON GRILL GOURMET RESTAURANT, INC. &  
SAIGON SPICE, INC. d/b/a SAIGON GRILL  
RESTAURANT,

Respondent.

08 Civ. 3332

J. Chin

ECF

-----X  
CONSENT JUDGMENT

On April 3, 2008, Petitioner, for and on behalf of the National Labor Relations Board ("the Board"), filed a Petition pursuant to Section 10(j) of the National Labor Relations Act ("the Act"; 61 Stat. 149; 73 Stat. 544; 29 U.S.C. § 160(j)), praying, *inter alia*, for issuance of an order enjoining and restraining Respondent Saigon Grill Restaurant from engaging in certain acts and conduct in violation of Section 8(a)(1) of the Act pending the final disposition of the matters involved herein pending before said Board; and

The parties, by their signatures below, having advised this Court of their desire to dispose of this matter by summary entry of a consent judgment;

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 5/23/2008

MAY 23 2008 8:32AM  
MAY-22-2008 13:20

WEISBERG\*WEISBE,ESQS

2127876237

P.3

IT IS HEREBY ORDERED AND ADJUDGED that pending the final disposition of this matter by the National Labor Relations Board, Respondent, its officers, representatives, agents, servants, employees, attorneys, and all persons acting in concert, or participation with it or them are enjoined and restrained, pending final disposition of the matters involved herein which are now pending before the Board, from in any manner or by any means:

(1) Discharging employees in retaliation for their concerted, protected activities; and

(2) In any like or related manner interfering with, restraining or coercing its employees in the rights guaranteed them under Section 7 of the Act.

IT IS FURTHER ORDERED AND ADJUDGED that pending the final disposition of this matter by the National Labor Relations Board, Respondent, its officers, representatives, agents, servants, employees, attorneys, and all persons acting in concert, or participation with it or them shall:

(3) Within five (5) days of the issuance of the Court's Order assign Jian Yun Chen, Yu Ming Yu, Li Qiang Lin, and Chen Guo Jin to work six (6) days per week, from 11:30 a.m. to 2:30 p.m., plus a paid half hour lunch period from 2:30 p.m. to 3:00 p.m., and from 5:30 p.m. to 9:30 p.m., plus a paid half hour dinner period from 9:30 p.m. to 10:00 p.m., displacing if necessary, any workers contracted for, hired, or reassigned to work these hours;

(4) Within one week of any application for reinstatement by any former delivery employee of Respondent, including but not limited to Ming Hua Chen, Shu Hui Chen, and Yu Xing Zhou, assign such former delivery employee to the work schedule set forth above in paragraph (3), conditional upon the submission by such former delivery employee of a completed I-9 form together with the supporting documentation required by that form;

(5) On each day that Respondent is open for business, Respondent shall first offer the 2:30 p.m. to 5:30 p.m. work shift to those employees listed above in paragraphs (3) and (4) or reinstated pursuant to paragraph (4). If more than one such employee desires to work the shift, it shall be assigned to the employee who has gone longest since working the shift. In the event none of the reinstated delivery employees accept the offered shift, it may be assigned to any other delivery employee;

(6) On each day that Respondent is open for business, Respondent shall first offer the 5:30 p.m. to closing work shift to those employees listed above in paragraphs (3) and (4) or reinstated pursuant to paragraph (4). If more than one such employee desires to work the shift, it shall be assigned to the employee who has gone longest since working the shift. In the event none of the reinstated delivery employees accept the offered shift, it may be assigned to any other delivery employee;

(7) Resume accepting delivery orders from and making deliveries to the delivery area serviced by the Employer immediately prior to March 1, 2007, to wit: all addresses south of 165<sup>th</sup> Street and north of 42<sup>nd</sup> Street and west of Fifth Avenue;

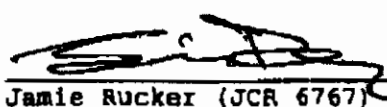
(8) Temporarily expunge any references to the discharges of the delivery workers from their personnel files and not rely on such discharges in any future discipline imposed prior to a final Board order;

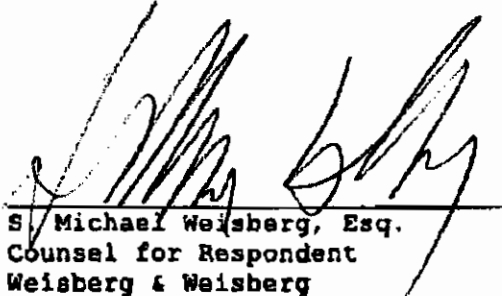
(9) Upon request by the Petitioner, Respondent shall promptly provide to Petitioner copies of the time cards and paystubs for all delivery employees issued or recorded during the period requested by Petitioner, such period not to extend beyond the effective date of this order or a final disposition of this matter by the National Labor Relations Board;

(10) Post copies of the District Court's opinion and order, together with a Chinese translation prepared at the Employer's expense and approved by the Regional Director of Region 2 of the Board, at both of the Employers' facilities where notices to employees are customarily posted; maintain such postings during the Board's administrative proceeding free from all obstructions and defacements; allow all employees free and unrestricted access to said postings; and grant agents of the Board reasonable access to Respondent's facilities to monitor compliance with this posting requirement; and

(11) Within twenty (20) days of the issuance of the ~~submitted to the Regional Director of Region 2 of the~~ National Labor Relations Board, a sworn affidavit from a responsible Respondent official setting forth with specificity the manner in which the Respondent has complied with the terms of this decree.

Done at New York, New York  
this 23<sup>rd</sup> day of May, 2008

  
Jamie Rucker (JCR 6767)  
Counsel for Petitioner  
National Labor Relations Board  
Region 2  
26 Federal Plaza, Room 3614  
New York, New York 10278  
212.264.7614

  
S/ Michael Weisberg, Esq.  
Counsel for Respondent  
Weisberg & Weisberg  
2463 Broadway  
New York, New York 10025  
212.787.7760

APPROVED AND SO ORDERED this 23<sup>rd</sup> day of May, 2008

  
Denny Chin, U.S.D.J.

DC

District Court's Order,  
file with the Court with  
a copy submitted to the  
Regional Director of  
Region 2 of the

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

**Date:**

**In Re:**

-v-

**Case #:**

( )

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

**J. Michael McMahon, Clerk of Court**

by: \_\_\_\_\_

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

-V-

## NOTICE OF APPEAL

civ. ( )

Notice is hereby given that

(party)

hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

**FORM 1**

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**MOTION FOR EXTENSION OF TIME  
TO FILE A NOTICE OF APPEAL**

civ. ( )

Pursuant to Fed. R. App. P. 4(a)(5), \_\_\_\_\_ respectfully  
(party)  
requests leave to file the within notice of appeal out of time. \_\_\_\_\_  
(party)  
desires to appeal the judgment in this action entered on \_\_\_\_\_ but failed to file a  
(day)  
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

**APPEAL FORMS**

Docket Support Unit

Revised: April 9, 2006



**FORM 2**

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**NOTICE OF APPEAL  
AND  
MOTION FOR EXTENSION OF TIME**

civ. ( )

1. Notice is hereby given that \_\_\_\_\_ hereby appeals to  
(party)  
the United States Court of Appeals for the Second Circuit from the judgment entered on \_\_\_\_\_.  
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time  
\_\_\_\_\_ respectfully requests the court to grant an extension of time in  
(party)  
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, \_\_\_\_\_ states that  
(party)  
this Court's judgment was received on \_\_\_\_\_ and that this form was mailed to the  
(date)  
court on \_\_\_\_\_  
(date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

**APPEAL FORMS**

Docket Support Unit

Revised: April 9, 2006



**FORM 3**

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

-----X  
-V-  
-----X

**AFFIRMATION OF SERVICE**

civ. ( )

I, \_\_\_\_\_, declare under penalty of perjury that I have  
served a copy of the attached \_\_\_\_\_

upon \_\_\_\_\_

whose address is: \_\_\_\_\_

Date: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

**APPEAL FORMS**

Docket Support Unit

Revised: April 9, 2006